

MEMORANDUM

TO: Governing Board Members

FROM: Carolyn S. Ansay, General Counsel

DATE: October 13, 2011

SUBJECT: Enter a Final Order Granting Petition for Declaratory Statement filed by Michael R. Kuebel and Sara L. Kuebel, Richard J. Dardas, Jo Ann Johnson, Trustee, and Carolyn T. Bracci, Eden on the Bay Subdivision, Collier County, Florida, and Enter Order Granting Petition for Leave to Intervene filed by Eden on the Bay Homeowners Association, Inc.

Background

On July 29, 2011, the South Florida Water Management District (District) received a Petition for Declaratory Statement (Petition) from Michael R. Kuebel, Sara L. Kuebel, Richard J. Dardas, Jo Ann Johnson, Trustee, and Carolyn T. Bracci (Petitioners) pertaining to structural buffers in the Eden on the Bay Subdivision. The Petition requests a Declaratory Statement pursuant to Section 120.565, Florida Statutes (Fla. Stat.), and Rule 28-105.001, Florida Administrative Code (F.A.C.).

The Petition requests a determination of the following:

1. Whether the Petitioners are responsible to alter, operate, maintain, remove or abandon that portion of structural buffers situated on their respective lots.
2. Whether the structural buffers are part of the surface water management system for Eden on the Bay.
3. Regardless of whether the structural buffers are part of the surface water management system, whether the structural buffers are an item required to be constructed, operated and maintained as part of the plans and specifications as set forth in the Permit.
4. Whether the Petitioners have the power and authority to operate and maintain the structural buffers, given that they are not a "Permittee," "responsible party," or "operating entity."

Standard General Permit Number 11-01694-P (the Permit) was issued on March 4, 1999, to Glen Eden on the Bay, L.P., for a surface water management system serving 41 acres of residential development known as Glen Eden on the Bay located in Collier County, Florida. Structural buffers are specifically referenced in the Permit. On May 12, 2008, the Permit was transferred to the Eden on the Bay Homeowner's Association, Inc. (Association).

On September 8, 2011, a Petition for Leave to Intervene (Petition to Intervene) was filed by the Association. The Petition to Intervene requests that the District's determination

“be strictly limited to the Petitioners’ particular circumstances, not the conduct or responsibilities of the Association arising from its organizational documents.” The Petition to Intervene acknowledges that the Association is responsible for compliance with the Permit and the operation and maintenance of the structural barriers. Petitioners filed a Response to the Association’s Motion to Intervene on September 13, 2011.

This Declaratory Statement specifically responds to the questions raised in the Petition as follows:

a. Pursuant to the Permit, the Petitioners are not responsible under permit requirements to alter, operate, maintain, remove or abandon that portion of the structural buffer situated on their respective lots, to the extent that those facilities are identified in the Permit.

b. The structural buffers, identified in the Permit, are part of the surface water management system for Eden on the Bay. This Statement does not apply to structural buffers, if any, which are not identified in the Permit.

c. The structural buffers, identified in the Permit, are an item required to be constructed, operated and maintained as part of the plans and specifications as set forth in the Permit.

d. The Permit does not grant the Petitioners the power and authority to operate and maintain the structural buffers identified in the Permit.

e. This Declaratory Statement does not make a determination as to whether the Petitioners have the responsibility, power or authority to operate, repair, maintain, remove or abandon the structural buffers on their property under Association documents or agreements between homeowners and the Association; nor does this Declaratory Statement make a determination as to whether Petitioners have any obligation to reimburse the Association for any work done by the association to operate, repair, maintain, remove or abandon the structural buffers on their property under Association documents or other agreements.

f. This Declaratory Statement does not authorize any activities.

Recommendation

Enter a Final Order Granting Petition for Declaratory Statement filed by Petitioners, including the findings set forth above, and Enter an Order Granting Petition for Leave to Intervene filed by Eden on the Bay Homeowners Association, Inc.

If you have any questions, please do not hesitate to call me at ext. 6976.

SRM